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| APPLICATION NO.   | FILING DATE   | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.  | CONFIRMATION NO. |
|---|---------------|----------------------|----------------------|------------------|
| 10/695,683  | 10/29/2003    | Charles F. Cory JR.  | CCORY.002A           | 5049             |
| 20995   | 7590          | 05/10/2007           | EXAMINER             |                  |
| KNOBBE MARTENS OLSON & BEAR LLP<br>2040 MAIN STREET<br>FOURTEENTH FLOOR<br>IRVINE, CA 92614 |               |                      | CEGIELNIK, URSZULA M |                  |
| ART UNIT  | PAPER NUMBER  |                      | 3711                 |                  |
| NOTIFICATION DATE   | DELIVERY MODE |                      | 05/10/2007           | ELECTRONIC       |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
eOAPilot@kmob.com

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/695,683             | CORY, CHARLES F.    |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Urszula M. Cegielnik   | 3711                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 13 April 2007.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-36 is/are pending in the application.

4a) Of the above claim(s) 34-36 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-33 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/29/03; 07/22/05</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

Applicant's election without traverse of Group I in the reply filed on 13 April 2007 is acknowledged. Since Applicant has not explicitly indicated whether the election is made with or without traverse, the Examiner is treating the election as being made without traverse.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 recites the limitation "the rearward portion" in line 2. There is improper antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, 6, 8, 9, 11-13, 17, 18, and 22-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Nathan (US Patent No. 5,509,708).

Nathan discloses the claimed invention including an elongated shaft; an opening at a proximal end; a concave surface at a forward side; a plurality of recesses at the forward side; a protrusion at a distal end; a distal most recess (see attached sheet).

The recitation "the opening sized and configured...to accommodate placement of a forefinger of a user through the opening..." (for example only) is directed to the intended use and there are no structural limitations directed to the opening as claimed. Applicant needs to distinguish over the prior art with structural limitations.

Furthermore, the opening and the plurality of recesses are capable of accommodating a finger (i.e. such as a child's fingers as well as an adult's fingers).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 5, 7, 10, 14-16, and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nathan (US Patent No. 5,509,708).

Nathan discloses the claimed invention except for claimed dimensions of the device (parts thereof); the protrusion having tips that are blunt.

Applicant has not provided any criticality with respect to the dimensions of the device (parts thereof) in the disclosure.

It would have obvious to one having ordinary skill in the art at the time the invention was made to provide the device and parts thereof with the claimed

dimensions, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nathan (US Patent No. 5,509,708) in view of Dudley, Jr. et al. (US Patent No. 6,658,743).

Nathan discloses the claimed invention except for the protrusion having tips that are blunt.

Dudley, et al. teach an elongate handheld device that has a protrusion with a blunt tip (col. 3, lines 66-67).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the protrusion with tips that are blunt as taught by Dudley, Jr. et al., since such a modification would prevent accidental snagging.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is 571-272-4420. The examiner can normally be reached on Monday through Friday, from 5:45AM-2:15PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene L. Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

umc



EUGENE KIM  
SUPERVISORY PATENT EXAMINER

